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JUDGE SCHEINDLIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11 CIV 1768

2011 Civ.

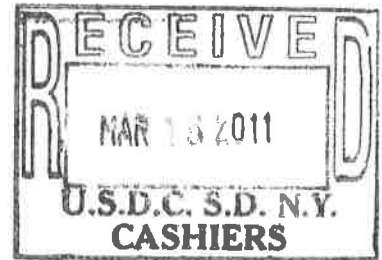
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ASSEKURANZ - UNION VERSICHERUNGS -
AGENTUR GmbH & CO. a/s/o J.F. HILLEBRAND
USA, INC.,

COMPLAINT

Plaintiff,

- against -

M/V IRENES RELIANCE her engines, boilers,
tackle, etc., EVERGREEN MARINE
CORPORATION, and L&M WAREHOUSE AND
TRANSPORTATION,



Defendants.
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Plaintiff, ASSEKURANZ- UNION VERSICHERUNGS-AGENTUR GmbH & CO. a/s/o
J.F. HILLEBRAND USA, INC., by and through its attorneys, Casey & Barnett, LLC, as and for
its Complaint, alleges upon information and belief as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. Jurisdiction is predicated upon 28 U.S.C. §1333.
2. This Court also has jurisdiction in accordance with the provisions of the Carmack Amendment, 49 U.S.C. §11706 and 28 U.S.C. §1337 and the matter in controversy exceeds \$10,000.00.

3. At all material times, ASSEKURANZ-UNION VERSICHERUNGS-AGENTUR GmbH & CO. (hereinafter "ASSEKURANZ-UNION " or "Plaintiff") was and is a corporation organized and existing by virtue of the laws of a foreign state with an office and place of business located at Herrlichkeit 5/6, 28199 Bremen, Germany, and is the subrogated underwriter of the consignment of wine described below:

4. At all material times, J.F. HILLEBRAND USA INC., was and is a business entity organized and existing under the laws of a foreign state with an office and place of business located at 1777 Sentry Parkway, Merion Towle, Blue Bell, Pennsylvania, and was the owner, consignee, and/or assured of the consignment of wine described below.

5. At all material times, defendant, EVERGREEN MARINE CORPORATION (hereinafter "Evergreen") was and is a foreign corporation with a place of business located at c/o Evergreen America Corporation, One Evertrust Plaza, Jersey City, New Jersey 07302 and owns, operates, manages and/or charters ships, including the M/V IRENES RELIANCE, that operate between various foreign and domestic ports and, in particular, within this district and was the owner, owner *pro hac vice*, charterer, manager and/or operator of the M/V IRENES RELIANCE, and at all relevant times, was and is still doing business within the jurisdiction of this Honorable Court.

6. The vessel, M/V IRENES RELIANCE, is now or will be during the pendency of this action within the jurisdiction of this Honorable Court.

7. At all material times, defendant, L&M WAREHOUSE & TRANSPORTATION (hereinafter "L&M"), was and is a foreign business entity with a place of business located at 2000 Bennett Road, Philadelphia, Pennsylvania, and was and is engaged in the business of

providing warehouse and transportation services and, at all times relevant, was and is doing business within the jurisdiction of this Honorable Court.

8. Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the said consignment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

RELEVANT FACTS

9. On or about June 13, 2010, a consignment, consisting of 377 cases of various French wine, laden in container number EISU568615-1, then being in good order and condition, was delivered to the M/V IRENES RELIANCE and to Evergreen and/or their agents at the port of Le Havre, France for transportation to New York, New York in consideration of an agreed upon freight, pursuant to Evergreen bill of lading number EGL540000040445, dated June 13, 2010.

10. On or about June 23, 2010, the subject container of wine was transported from the port of New York to the warehouse of defendant, L&M, in Philadelphia, Pennsylvania.

11. On or about July 6, 2010, defendant, L&M, transported 220 cases of wine from the subject consignment to the warehouse of Western Carriers in North Bergen, New Jersey for storage.

12. Upon arrival at Western Carriers on July 6, 2010, it was noted that the 220 cases of wine were delivered in a non-refrigerated truck, and the temperature of the wine within the truck measured 84 degrees Fahrenheit.

13. Pursuant to the relevant waybills, the defendants were required to maintain the wine at a temperature of 54 degrees Fahrenheit during transport.

14. Upon inspection at Western Carriers facility, it was discovered that the consignment of wine was not in the same good order and condition as when received by the defendants, but instead, had sustained damages as a result of exposure to excessively high temperatures while in the defendants care, custody, and control.

15. As a result of the damages sustained to the shipment, consignee, J.F. Hillebrand USA, Inc., sustained a loss, as the product was determined to be a constructive total loss and was destroyed.

16. The damage to the aforementioned consignment was not the result of any act or omission of the plaintiff but, to the contrary, was due solely as the result of the negligence, fault, neglect, breach of contract of carriage, and bailment on the part of the defendants.

17. By reason of the foregoing, plaintiff has sustained losses which will be shown with specificity at trial, no part of which has been paid, although duly demanded, which are presently estimated to be no less than \$165,000.00.

WHEREFORE, Plaintiff prays:

1. The Court order, adjudge and decree that defendants EVERGREEN MARINE CORPORATION and L&M WAREHOUSE & TRANSPORTATION be found liable, jointly and severally, to plaintiff for the losses sustained herein, together with pre-judgment and post judgment interest thereon and their costs; and,

2. That this Court grant to plaintiff such other and further relief as may be just and proper.

Dated: New York, New York
March 14, 2011
377-04

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By:



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